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DATE: January 29, 2007

Number of pages with cover page:	**16**	

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PLEASE PROCESS THE ATTACHED.

U.S. Patent Application Serial No. 10/683,538
For: SYSTEM AND METHOD FOR PROCESSING SHREDDED VEGETABLES
By: Narayan D. PATIL et al.
Our Reference: 14564-20001.00

Attached is the following:

1. Transmittal (1 page)
2. Fee Transmittal (in duplicate, 2 pages)
3. Appeal Brief (12 pages)

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PTO/SB/21 (09-04)
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TRANSMITTAL FORM

(to be used for all correspondence after initial filing)

Application Number	10/683,538
Filing Date	October 10, 2003
First Named Inventor	Narayan D. PATIL
Art Unit	3654
Examiner Name	T. Matthews
Attorney Docket Number	145842000100
Total Number of Pages in This Submission	15

ENCLOSURES *(Check all that apply)*

☒ Fee Transmittal Form (in duplicate, 2 pages)
  ☐ Fee Attached
☐ Amendment/Reply
  ☐ After Final
  ☐ Affidavits/declaration(s)
☐ Extension of Time Request
☐ Express Abandonment Request
☐ Information Disclosure Statement
☐ Certified Copy of Priority Document(s)
☐ Reply to Missing Parts/ Incomplete Application
  ☐ Reply to Missing Parts under 37 CFR 1.52 or 1.53

☐ Drawing(s)
☐ Licensing-related Papers
☐ Petition
☐ Petition to Convert to a Provisional Application
☐ Power of Attorney, Revocation Change of Correspondence Address
☐ Terminal Disclaimer
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  ☐ Landscape Table on CD

☐ After Allowance Communication to TC
☐ Appeal Communication to Board of Appeals and Interferences
☒ Appeal Communication to TC (Appeal Brief) (12 pages)
☐ Proprietary Information
☐ Status Letter
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Remarks

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Firm Name	MORRISON & FOERSTER LLP (Customer No. 20872)		
Signature			
Printed name	Peter J. Yim		
Date	January 29, 2007	Reg. No.	44,417

I hereby certify that this paper (along with any paper referred to as being attached or enclosed) is being transmitted by facsimile to the Patent and Trademark Office, facsimile no. (571) 273-8300, on the date shown below.

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Fees pursuant to the Consolidated Appropriations Act, 2005 (H.R. 4818).

FEE TRANSMITTAL
For FY 2006

☐ Applicant claims small entity status. See 37 CFR 1.27

TOTAL AMOUNT OF PAYMENT	($)	500.00

Complete if Known

Application Number	10/683,538
Filing Date	October 10, 2003
First Named Inventor	Narayan D. PATIL
Examiner Name	T. Matthews
Art Unit	3654
Attorney Docket No.	145842000100

METHOD OF PAYMENT (check all that apply)

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FEE CALCULATION (All the fees below are due upon filing or may be subject to a surcharge.)

1. BASIC FILING, SEARCH, AND EXAMINATION FEES

	FILING FEES		SEARCH FEES		EXAMINATION FEES		
Application Type	Fee ($)	Small Entity Fee ($)	Fee ($)	Small Entity Fee ($)	Fee ($)	Small Entity Fee ($)	Fees Paid ($)
Utility	300	150	500	250	200	100	
Design	200	100	100	50	130	65	
Plant	200	100	300	150	160	80	
Reissue	300	150	500	250	600	300	
Provisional	200	100	0	0	0	0	

2. EXCESS CLAIM FEES

Fee Description	Fee ($)	Small Entity Fee ($)
Each claim over 20 (including Reissues)	50	25
Each independent claim over 3 (including Reissues)	200	100
Multiple dependent claims	360	180

Total Claims		Extra Claims		Fee ($)		Fee Paid ($)
21	-24 =	0	x	50	=	0.00

HP = highest number of total claims paid for, if greater than 20.

Indep. Claims		Extra Claims		Fee ($)		Fee Paid ($)
3	-3 =	0	x	200	=	0.00

HP = highest number of independent claims paid for, if greater than 3.

Multiple Dependent Claims

Fee ($)	Fee Paid ($)
360	0.00

3. APPLICATION SIZE FEE

If the specification and drawings exceed 100 sheets of paper (excluding electronically filed sequence or computer listings under 37 CFR 1.52(e)), the application size fee due is $250 ($125 for small entity) for each additional 50 sheets or fraction thereof. See 35 U.S.C. 41(a)(1)(G) and 37 CFR 1.16(s).

Total Sheets		Extra Sheets		Number of each additional 50 or fraction thereof		Fee ($)		Fee Paid ($)
	- 100 =		/50		(round up to a whole number) x		=	

4. OTHER FEE(S)

		Fees Paid ($)
Non-English Specification, $130 fee (no small entity discount)		
Other (e.g., late filing surcharge):	1402 Filing a brief in support of an appeal	500.00

SUBMITTED BY

Signature	PJY	Registration No. (Attorney/Agent)	44,417	Telephone	(415) 268-6373
Name (Print/Type)	Peter J. Yim			Date	January 29, 2007

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Dated: January 29, 2007 Signature: PtJ.Y.
(Peter J. Yim)

Docket No.: 145642000100
(PATENT)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:
Narayan D. PATIL et al.

Serial No.: 10/683,538

Filing Date: October 10, 2003

For: SYSTEM AND METHOD FOR PROCESSING SHREDDED VEGETABLES

Examiner: T. Matthews

Group Art Unit: 3654

APPEAL BRIEF

MS APPEAL BRIEF
Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

Dear Sir:

This brief is in furtherance of the Notice of Appeal, filed in this case on November 27, 2006. The fees required under § 1.17(f) and any required petition for extension of time for filing this brief and fees therefore, are dealt with in the accompanying TRANSMITTAL OF APPEAL BRIEF.

This brief contains items under the following headings as required by 37 C.F.R. § 41.37 and M.P.E.P. § 1205:

I. Real Party in Interest
II. Related Appeals and Interferences
III. Status of Claims
IV. Status of Amendments
V. Summary of Claimed Subject Matter
VI. Grounds of Rejection to be Reviewed on Appeal
VII. Arguments
VIII. Claims Appendix
IX. Evidence Appendix
X. Related Proceedings Appendix
Appendix A. Claims

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I. REAL PARTY IN INTEREST

The real party in interest for this appeal is:

Dole Fresh Vegetables, Inc. of Salinas, California.

II. RELATED APPEALS, INTERFERENCES, AND JUDICIAL PROCEEDINGS

There are no other appeals, interferences, or judicial proceedings that will directly affect or be directly affected by or have a bearing on the Board's decision in this appeal.

III. STATUS OF CLAIMS

A. Total Number of Claims in Application

There are 21 claims pending in the application.

B. Current Status of Claims

1. Claims canceled: 2, 17 and 18
2. Claims withdrawn from consideration but not canceled: 0
3. Claims pending: 1, 3-16, and 19-24
4. Claims allowed: 0
5. Claims rejected: 1, 3-16, and 19-24
6. Claims objected to: 0

C. Claims on Appeal

The claims on appeal are claims 1, 3-16, and 19-24.

IV. STATUS OF AMENDMENTS

No Amendments remain outstanding.

V. SUMMARY OF CLAIMED SUBJECT MATTER

Claim 1 recites a system for separating shredded vegetable pieces. (Page 2, paragraph 8, lines 1-2; page 2, paragraph 9, lines 1-2; FIG. 1A, system 10.) The system includes a slicer configured to cut a vegetable having a leaf portion and a core portion into a plurality of pieces of the leaf and core portions to form a mixture of leaf pieces and core pieces. (Pages 2 and 3, paragraph 9, lines 2-8; page 3, paragraph 10, lines 1-2; FIG. 1A, slicer 16.) The system also includes a sorting mechanism having an infeed end and a discharge end. (Page 3, paragraph 12, lines 1-2; page 5, paragraph 18, lines 3-4; FIGs. 1A and 2B, sorting mechanism 20.) The sorting mechanism comprises one or more screens having a plurality of screen apertures. (Page 4, paragraph 4, lines 2-8; FIGs. 2A and 2B, screen 24, aperture 28.) The plurality of screen apertures have a shape and size suitable to separate the core pieces from the mixture based on their dimensions. (Page 4, paragraph 15, lines 1-6; page 4, paragraph 16, lines 1-17.)

Claim 15 recites a system for separating shredded vegetable pieces. (Page 2, paragraph 8, lines 1-2; page 2, paragraph 9, lines 1-2; FIG. 1A, system 10.) The system includes a slicer configured to cut a vegetable having a leaf portion and a core portion into a plurality of leaf pieces and core pieces to form a mixture of leaf and core pieces. (Pages 2 and 3, paragraph 9, lines 2-8; page 3, paragraph 10, lines 1-2; FIG. 1A, slicer 16.) The system also includes one or more screens having a plurality of screen apertures. (Page 4, paragraph 4, lines 2-8; FIGs. 2A and 2B, screen 24, aperture 28.) The plurality of screen apertures have a shape and size suitable to separate core pieces from the mixture based on their dimensions. (Page 4, paragraph 15, lines 1-6; page4, paragraph 16, lines 1-17.) The system also includes a feed shaker that transports the mixture from the slicer to the sorting mechanism. (Page 3, paragraph 10, lines 1-5; FIG. 1A, feed shaker 18.)

Claim 16 recites a mechanical method for separating shredded vegetable pieces. (Page 2, paragraph 8, lines 1-2; page 2, paragraph 9, lines 1-2) A vegetable having a leaf portion and a core portion is provided. (Pages 2 and 3, paragraph 9, lines 2-8; page 3, paragraph 10, lines 1-2.) The leaf and core portions are cut into a plurality of leaf pieces and core pieces to form a mixture of leaf and core pieces. (Pages 2 and 3, paragraph 9, lines 2-8; page 3, paragraph 10, lines 1-2.) The mixture is fed to a sorting mechanism having an infeed end, a discharge end, and one or more screens. (Page 3, paragraph 12, lines 1-2; page 5, paragraph 18, lines 3-4.) The one or more screens have a plurality of screen apertures. (Page 4, paragraph 4, lines 2-8.) Core pieces are separated from the mixture based on their dimensions using the one or more screens. (Page 4, paragraph 15, lines 1-6; page 4, paragraph 16, lines 1-17.)

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

Whether claims 1, 3-8, 14-16, 19-24 are patentable under 35 U.S.C. § 103(a) over U.S. Patent No. 5,727,690 (the Hofmeister reference) in view of U.S. Patent No. 3,905,807 (the Jacobson reference).

Whether claims 9-13 are patentable under 35 U.S.C. § 103(a) over the Hofmeister reference in view of the Jacobson reference and in further view of U.S. Patent No. 6,637,600 (the Miyamoto reference).

VII. ARGUMENT

Claims 1, 3-16, and 19-24 stand rejected. Applicants request reversal.

A. Claims 1, 3-8, 14-16, and 19-24 Rejected Under 35 U.S.C. § 103(a)

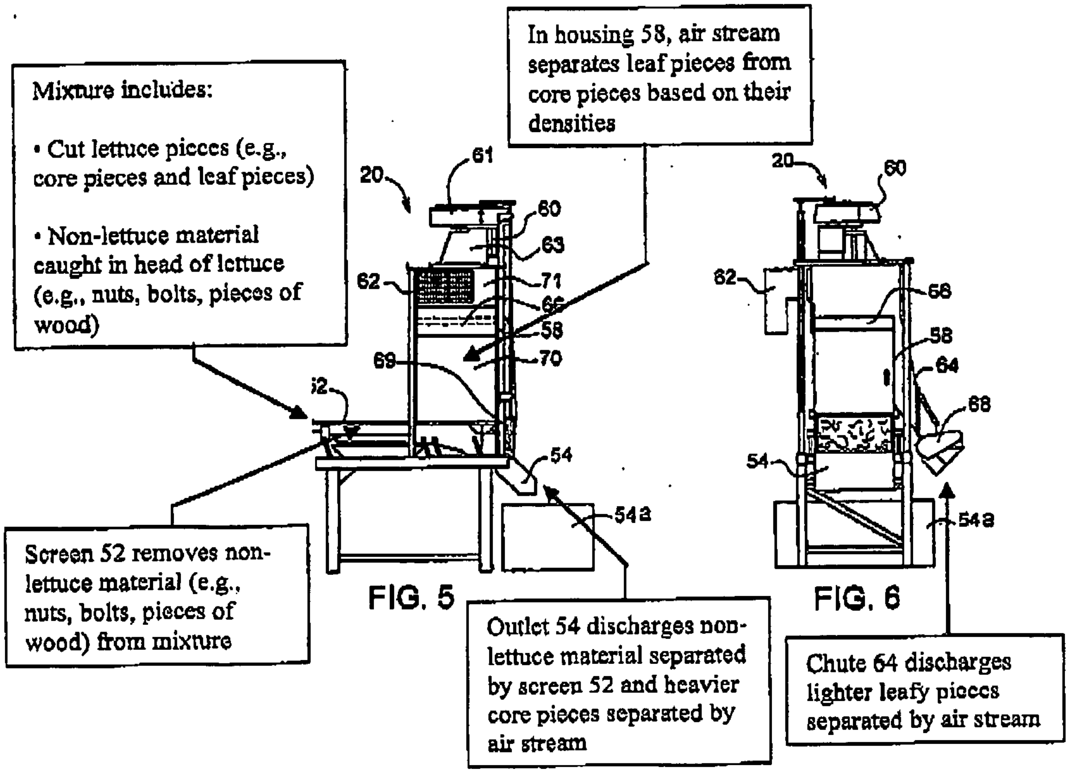
Claims 1, 3-8, 14-16, and 19-24 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the Hofmeister reference in view of the Jacobson reference.

Applicants assert that the Examiner has failed to establish a *prima facie* case of obviousness because the Examiner's proposed combination requires modifying the principle of operation of the Hofmeister reference. MPEP 2143.02(VI) states, "[i]f the proposed modification or combination of the prior art would **change the principle of operation** of the prior art invention being modified, then the teachings of the reference are not sufficient to render the claims *prima facie* obvious." (Emphasis added.)

Claims 1 and 15 recite, in part: "one or more screens having a plurality of screen apertures, wherein the **plurality of screen apertures have a shape and size suitable to separate the core pieces from the mixture [of leaf pieces and core pieces] based on their dimensions**." Claim 16 recited, in part, "**separating core pieces from the mixture [of leaf pieces and core pieces] based on their dimensions using the one or more screens**."

In rejecting claims 1, 15, and 16 as being obvious, the Examiner proposes, "to modify the apparatus of Hofmeister to include the teachings of Jacobson so that sorting mechanism comprising one or more screens...so that core pieces of different shapes and dimensions could be separated from the mixture based on their dimensions."

As will be discussed in more detail below and as shown below in FIGs. 4 and 5, which have been annotated, the Hofmeister reference discloses using a vibrating screen 52 to separate non-lettuce material (e.g., nuts, bolts, pieces of wood, etc.) from lettuce pieces rather than separating core pieces from leafy pieces. Instead, the core pieces and leafy pieces are separated based on their **densities using an air stream** in a vertical housing 58. In particular, the lighter leafy pieces are "airveyed" by the air stream, while the heavier core pieces drop down through the air stream. Thus, modifying device 20 to separate core pieces and leafy pieces **based on their dimensions using screens**, as proposed by the Examiner, changes the principle of operation of device 20 (i.e., to separate core pieces and leafy pieces **based on their densities using an air stream**.)



In housing 58, air stream separates leaf pieces from core pieces based on their densities

Mixture includes:

- Cut lettuce pieces (e.g., core pieces and leaf pieces)
- Non-lettuce material caught in head of lettuce (e.g., nuts, bolts, pieces of wood)

Screen 52 removes non-lettuce material (e.g., nuts, bolts, pieces of wood) from mixture

FIG. 5

Outlet 54 discharges non-lettuce material separated by screen 52 and heavier core pieces separated by air stream

FIG. 6

Chute 64 discharges lighter leafy pieces separated by air stream

1. Stated Principle of Operation of Hofmeister Reference is to Separate Vegetable Pieces by Density using an Air Stream

The preamble of claim 1 of the Hofmeister reference recites, "[a]n apparatus for separating **high density** vegetable pieces from **low density** vegetable pieces." [Emphasis added.] Column 2, lines 33-35 also state, "a gravity/air separation device including means to separate, **by density**, undesirable cut vegetable pieces from desirable cut vegetable pieces." Column 4, lines 39-51 disclose, in housing 58, an air stream is used to separate the core pieces and leaf pieces based on their different densities. Thus, the stated principle of operation of the Hofmeister reference is to separate cut vegetable pieces (e.g., lettuce pieces) **by density using an Air Stream**.

2. Screen 52 Separates Non-Lettuce Material (e.g., Nuts, Bolts, Pieces of Wood) from Mixture of Lettuce Pieces

As depicted in FIG. 4 of the Hofmeister reference, a head of lettuce is cut into pieces using a commercial cutter 16. (Column 3, lines 52-53.) The mixture is then transported to gravity/air separating device 20. (Column 3, lines 53-57.)

Hofmeister discloses, at column 4, line 26, that the gravity/air separation device 20 includes a vibrating screen 52. Underneath vibrating screen 52 is an outlet hopper 54a. Outlet hopper 54a collects the undesirable parts of the process, which includes two types of materials. One type of material is the undesirable heavy part of the lettuce. The second type of material is undesirable non-lettuce material, such as nuts, bolts, pieces of wood, etc.

In particular, column 4, line 31 states, "The outlet hopper 54a receives the cut out cores, hearts, ribs, and veins of the lettuce as well as other undesirable solids, such as nuts, bolts, pieces of wood and other types of material which have been found in the lettuce which have been picked up both form the field where the lettuce is grown as well as those solids which have been picked up during the transporting of the lettuce from the field to the processing plant."

Thus, the two types of waste found in outlet hopper 54a come from two distinct places. The undesirable lettuce material (i.e., cut out cores, hearts, ribs, and veins) is separated from the desirable lettuce material in the **air stream separation device**, where due to its density these core portions fall to the bottom. The non-lettuce material (i.e., nuts, bolts, pieces of wood, etc.) is separated from the lettuce mixture by **vibrating screen 52**.

In particular, column 4, line 28 states: "An outlet hopper 54a is disposed beneath the vibrating screen 52 to receive any undesirable heavy material which may be **caught in the head of lettuce**." First, it is unreasonable to conclude from this disclosure that the vibrating screen 52 separates core pieces because core pieces are **not caught in a head of lettuce**. Instead, the term "heavy material" in this cited portion refers to the non-lettuce material (i.e., nuts, bolts, pieces of wood, etc.) that can get **caught in a head of lettuce** during harvesting. Second, if the vibrating screen 52 was configured to separate core pieces from leaf pieces, there would be no need to use the air stream.

In essence, the cutting operation creates a mixture of leafy portions, core portions, and non-lettuce material. The vibrating screen 52 removes the non-lettuce material, which leaves a mixture of leafy and core portions. The air stream then separates the core portion from the desirable leafy portion based on their densities.

Therefore, the vibrating feed screen does not separate the core portions from the leaf portions. Instead, it separates the non-lettuce material from the mixture of core and leaf portions.

3. Core Pieces and Leafy Pieces Separated Based on Their Densities Using Air Stream

As discussed above, vibrating screen 52 is used to separate out non-lettuce material from the mixture to leave only cut lettuce pieces. In housing 58, an **air stream** is then used to separate the core pieces and leaf pieces **based on their different densities**. (Column 4, lines 39-51.) In particular, the lighter leaf pieces are separated out of the mixture by the air stream and carried out of discharge chute 64. (Column 3, lines 6-13 and 58-66.) The heavier core pieces drop down out of discharge outlet 54 along with the non-lettuce material separated earlier by vibrating screen 52. (Column 3, lines 6-13 and 58-66.)

The Hofmeister reference details the densities of the various vegetable parts. For example, at column 1, line 67 to column 2, line 13, the Hofmeister reference discloses that "...the good leafy part of the lettuce will generally have a density of approximately 0.8....the core will generally have an approximate density of 1.2....the heavy rib will have an approximate density of 1.1....the heart will have an approximate density of 1.0...".

Because the Hofmeister discloses separating core pieces and leafy pieces based on their densities using an air stream, Applicants assert that the Examiner's proposed modification to use screens to separate core pieces and leafy pieces based on their dimensions would change the principle of operation of the gravity/air separating device 20 disclosed in the Hofmeister reference. Additionally, because the vibrating screen 52 in device 20 is used to separate out non-lettuce material (nuts, bolts, pieces of wood, etc.) from lettuce material (e.g., core pieces and leafy pieces), Applicants assert that the Hofmeister reference teaches away from using screens to separate core pieces and leafy pieces.

Thus, Applicants assert that claims 1, 15, and 16 are allowable over the Examiner's proposed combination of the Hofmeister reference and the Jacobson reference. Additionally, Applicants assert that claims 3-8, 14, 19-24 are allowable for at least the reason that they depend from allowable independent claims.

B. Claims 9-13 Rejected Under 35 U.S.C. § 103(a)

Claims 9-13 stand rejected under 35 U.S.C. 103(a) as being unpatentable over the Hofmeister reference in view of the Jacobson reference an din further view of U.S. Patent No. 6,637,600 (the Miyamoto reference). Applicants assert that claims 9-13 are allowable for at least the reason that they depend from an allowable independent claim.

C. Conclusion

For the forgoing reasons, Applicant requests reversal of the Examiner's rejections of claims 1, 3-16, and 19-24.

VIII. CLAIMS APPENDIX

A list of the claims involved in the present appeal is attached hereto as Appendix A.

IX. EVIDENCE APPENDIX

None.

X. RELATED PROCEEDINGS APPENDIX

None.

In the event the U.S. Patent and Trademark office determines that an extension and/or other relief is required, Applicants petition for any required relief including extensions of time and authorizes the Commissioner to charge the cost of such petitions and/or other fees due in connection with the filing of this document to Deposit Account No. 03-1952 referencing docket no. 145642000100. However, the Commissioner is not authorized to charge the cost of the issue fee to the Deposit Account.

Dated: January 29, 2007

Respectfully submitted,

By ____________

Peter Yim
Registration No.: 44,417
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APPENDIX A

1. A system for separating shredded vegetable pieces comprising:

a) a slicer configured to cut a vegetable having a leaf portion and a core portion into a plurality of pieces of the leaf and core portions to form a mixture of leaf pieces and core pieces; and

b) a sorting mechanism having an infeed end and a discharge end, wherein the sorting mechanism comprises one or more screens having a plurality of screen apertures, wherein the plurality of screen apertures have a shape and size suitable to separate the core pieces from the mixture based on their dimensions.

2. (Canceled)

3. The system of claim 1 wherein the plurality of screen apertures are rectangular in shape.

4. The system of claim 3 wherein the rectangular apertures measure about 2.5 cm (about 1 inch) in length to about 1.6 cm (about 5/8 inch) in width.

5. The system of claim 1 wherein the one or more screens comprises a series of screens having a plurality of apertures between the infeed end and the discharge end, and wherein the apertures of one or more screens differ in shape and size from the apertures of other screens in the series.

6. The system of claim 1 further comprising a feed shaker that transports the mixture from the slicer to the sorting mechanism.

7. The system of claim 6 wherein the feed shaker is configured to vibrate to facilitate uniform distribution of the mixture on the feed shaker.

8. The system of claim 7 wherein the feed shaker is configured to vibrate to further facilitate uniform distribution of the mixture on the sorting mechanism.

9. The system of claim 6 wherein the feed shaker includes an end, and wherein the end of the feed shaker and the sorting mechanism form a non-bias feed arrangement, and wherein the mixture is transported from the feed shaker onto the sorting mechanism through the end of the feed shaker.

10. The system of claim 6 wherein the feed shaker includes an end, and wherein the end of the feed shaker and the sorting mechanism form a bias angle, and wherein the mixture is transported from the feed shaker onto the sorting mechanism through the end of the feed shaker.

11. The system of claim 10 wherein the bias angle is between about 0° to about 90°.

12. The system of claim 10 wherein the bias angle is between about 45° to about 90°.

13. The system of claim 10 wherein the bias angle is greater than 90°.

14. The system of claim 1 wherein the vegetable is a cabbage.

15. A system for separating shredded vegetable pieces comprising:

a) a slicer configured to cut a vegetable having a leaf portion and a core portion into a plurality of leaf pieces and core pieces to form a mixture of leaf and core pieces;

b) one or more screens having a plurality of screen apertures, wherein the plurality of screen apertures have a shape and size suitable to separate core pieces from the mixture based on their dimensions; and

c) a feed shaker that transports the mixture from the slicer to the sorting mechanism.

16. A mechanical method for separating shredded vegetable pieces comprising:

a) providing a vegetable having a leaf portion and a core portion;

b) cutting the leaf and core portions into a plurality of leaf pieces and core pieces to form a mixture of leaf and core pieces;

c) feeding the mixture to a sorting mechanism having an infeed end, a discharge end, and one or more screens, wherein the one or more screens have a plurality of screen apertures; and

d) separating core pieces from the mixture based on their dimensions using the one or more screens.

17-18. (Canceled)

19. The mechanical method of claim 16 wherein the plurality of screen apertures are rectangular in shape.

20. The mechanical method of claim 19 wherein the rectangular apertures measure about 2.5 cm (about 1 inch) in length to about 1.6 cm (about 5/8 inch) in width.

21. The mechanical method of claim 16 wherein the one or more screens comprises a series of screens having a plurality of apertures between the infeed end and the discharge end, and wherein the apertures of one or more screens differ in shape and size from the apertures of other screens in the series.

22. The mechanical method of claim 16 wherein the step of separating comprises passing leaf pieces through the apertures into a collection pan, and thereafter, into a first tank, and channeling core pieces that remain on the one or more screens to a second tank.

23. The mechanical method of claim 16 further comprising the step of packaging the mixture without the core pieces.

24. The mechanical method of claim 16 wherein the vegetable is a cabbage.